IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. [redacted]

DISTRICT OF COLUMBIA, *Petitioner*,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

CHESTER H. GRAY,
Corporation Counsel, D. C.
MILTON D. KORMAN,
Principal Assistant Corporation Counsel, D. C.
HENRY E. WIXON,
Assistant Corporation Counsel, D. C.
HARRISON S. HOWLS,
Assistant Corporation Counsel, D. C.
Attorneys for Petitioner.
District Building,
Washington 4, D. C.

PRINTING DIVISION D C GOVERNMENT

INDEX

SUBJECT INDEX

	PAGE
Opinions below	2
Grounds on Which the Jurisdiction of This Court is Invoked	2
Statement of Question Presented	3
District of Columbia Statutes Involved	3
Statement of the Case	5
Reasons for Granting Writ	8
Conclusion	13
Appendix	
Opinion of the Court	1A
Judgment of the Court	14A

CASES CITED

Adriance v. *Higgins*, 113 F 2d 1013 13

Commissioner of Internal Revenue v. *Marosi*, 156 F. 2d 929 9, 10

Del Vecchio v. *Bowers*, 296 U. S. 280, 80 L. Ed. 229, 56 S. Ct. 190 8

District of Columbia v. *Pace*, 320 U. S. 698, 88 L. Ed. 408, 64 S. Ct. 406 8

Florida National Bank and Trust Company at Miami v. *United States*, 182 F. Supp. 76 13

Harris v. *Commissioner of Internal Revenue*, 340 U. S. 106, 95 L. Ed. 111, 71 S. Ct. 181 10, 11

Helvering v. *United States Trust Co.*, 111 F. 2d 576, cert. denied 311 U. S. 678 13

Merrill v. *Fahs*, 324 U. S. 308, 89 L. Ed. 963, 65 S. Ct. 655 11

Meyer's Estate v. *Commissioner*, 110 F. 2d 367, cert. denied 310 U. S. 651 12

STATUTES CITED

Act of August 17, 1937, 50 Stat. 683, ch. 690, as amended by Title V of the Act of July 26, 1939, 53 Stat. 1111:

Section 1(a), Title V, Article I 4

Section 1(c), Title V, Article I 5

Section 1(d), Title V, Article I 5

District of Columbia Revenue Act of 1937, Sections 3 and 4 of Title IX, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223, and as amended by Section 5(b) of the Act of July 26, 1939, 53 Stat. 1108, and by Sections 3(a) and (3)b of the Act of July 10, 1952, 66 Stat. 543, ch. 649:

Section 3 7

Section 4 3, 7

District of Columbia Code, 1951:
Section 47-1601(a) 4
Section 47-1601(c) 5
Section 47-1601(d) 7
District of Columbia Code, 1951, Supp. VIII:
Section 47-2403 7
Section 47-2404 ..... 3, 7

MISCELLANEOUS CITATIONS

United States Code:
Title 28, Part IV, Section 1254(1) 3
88 Washington Law Reporter 486 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The District of Columbia, a municipal corporation, through its attorneys, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit. The majority of the Division of that Court to which this case was assigned concluded that an obligation arising under a separation agreement relinquishing marital rights, which agreement was not incorporated in the decree of divorce between the parties, was made "for full consideration in money or money's worth" and was, therefore, not taxable under the District of Columbia inheritance tax statute.

Mr. Justice Burton, retired, in his dissent stated in essence that decisions of the Supreme Court of the United States directed to substantially identical provisions of Federal tax statutes were determinative of the question posed under the District tax statute; that the decision of the majority was contrary to these decisions, and that the contentions of the District which had been rejected by the majority were correct.

OPINIONS BELOW

The official opinion of the United States Court of Appeals for the District of Columbia Circuit has not been reported as yet in either the official reports of that court or in the Federal reporter. The opinion is included herein on page 1A, *infra*, of Appendix A to this petition.

The opinion of the District of Columbia Tax Court does not appear in any official report, but is contained in 88 Washington Law Reporter 486, an unofficial reporter containing opinions of the courts of the District of Columbia. The opinion of the District of Columbia Tax Court, and its decision, from which an appeal was taken to the United States Court of Appeals for the District of Columbia Circuit, are included in the Joint Appendix printed in accordance with the rules of the United States Court of Appeals for the District of Columbia Circuit and filed with this petition.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on January 19, 1961, and is included herein on page 14A, *infra*, of Appendix A to this petition. A petition filed with the Court for a rehearing en banc was denied on February 21, 1961.

It is believed that this Court is vested with jurisdiction to review the judgment of the United States Court of Appeals for the District of Columbia Circuit by writ of certi-

orari under the provisions of Title 28, Part IV, Section 1254(1), United States Code, as amended, and Section 4, Title IX, District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223, and as amended by Section 3 (b) of the Act of July 10, 1952, 66 Stat. 543, ch. 649 (Section 47-2404, D. C. Code, 1951, Supp. VIII).

STATEMENT OF QUESTION PRESENTED

The District of Columbia inheritance tax statute imposes an inheritance tax upon the transfer of property having its taxable situs in the District and transferred from a deceased "either by will or by law, or by right of survivorship," as well as "by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth)." Respondent, as the executrix of the estate of Harold C. Frick, made a payment out of the assets of the estate of the deceased to Vida M. Frick, the former wife of the deceased, based upon a provision of a separation agreement entered into between Vida and the deceased, which provision was not incorporated in or made a part of a Missouri decree of final divorce nullifying the marriage of the deceased and Vida. Under these circumstances, the question presented is:

Was not the transfer made by respondent to the former wife of the deceased under a provision of a separation agreement between them a taxable transfer under the District of Columbia inheritance tax statute?

DISTRICT OF COLUMBIA STATUTES INVOLVED

Title V, Article I, Section 1(a), Section 1(c), and Section 1(d) of the Act of August 17, 1937, 50 Stat. 683, ch. 690, as amended by Title V of the Act of July 26, 1939, 53 Stat. 1111 (Section 47-1601(a), (c), (d), D. C. Code, 1951), provides:

"TITLE V—INHERITANCE AND ESTATE TAXES"

Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:

"ARTICLE I—INHERITANCE TAX

Sec. 1 (a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the father, mother, husband, wife, children by blood or legally adopted children, or any other lineal descendants or lineal ancestors of the decedent, shall be subject to a tax as follows: 1 per centum of so much of said property as is in excess of $5,000 and not in excess of $50,000; 2 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 3 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 4 per centum of so much of said property as is in excess of $500,000 and not in excess of $1,000,000; 5 per centum of so much of said property as is in excess of $1,000,000.

• • •

"(c) So much of said property so transferred to any person other than those included in paragraphs (a) and (b) of this section and all firms, institutions, associations, and corporations shall be subject to a tax as follows: 5 per centum of so much of said property as is in excess of $1,000 and not in excess of $25,000; 7 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 9 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 12 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 15 per centum of so much of said property as is in excess of $500,000.

"(d) Executrix, administrators, trustees, and other persons making distribution shall only be discharged from liability for the amount of such tax, with the payment of which they are charged, by paying the same as hereinafter described."

STATEMENT OF THE CASE

On December 22, 1934, Harold C. Frick and Vida M. Frick were absolutely divorced by decree of the Circuit Court of Jackson County, Missouri, located in Kansas City, Missouri, where the parties had resided since their marriage. On the date of the divorce, and immediately prior to the entry of the divorce decree, the parties entered into a separation agreement, among the terms of which was the following:

"(3) If the first party [Harold C. Frick] should at any time hereafter depart this life, in lieu of all payments hereunder due from the date of his death and necessarily to be paid from his estate, a lump sum shall be paid to second party as follows:

• • •

"(d) If he should die between the years 1952 and 1958, the sum of Twenty-five Thousand Dollars ($25,000)."

The decree of divorce entered by the Missouri Court *did not* incorporate the provisions of the separation agreement.

Harold Frick subsequently moved to the District of Columbia and married Frances Carter, the present executrix of his estate. Harold Frick died on July 12, 1956 at which time he was domiciled in the District of Columbia.

On September 7, 1957, Harold's former wife, Vida Frick, brought suit in the United States District Court for the District of Columbia for the sum of $25,000 which she claimed to be due and owing to her under the provision of the *separation agreement* providing for a lump sum payment to her in the event of Harold's death between the years 1952 and 1958. On November 14, 1957, the executrix of Harold's estate, Frances Carter Frick, paid Vida, in full settlement of her claim under the separation agreement, the sum of $23,500. On November 14, 1957, the suit was dismissed by Vida as "Settled, Satisfied and Dismissed with Prejudice."

On June 3, 1958, the assessing authority of the District of Columbia assessed an inheritance tax of $1,125 against Vida based upon the payment made to her under the separation agreement. The assessment of inheritance tax not having been paid by Vida or the executrix of Harold's estate, the Finance Officer of the District of Columbia proceeded by distraint to secure payment from the executrix of the amount of taxes and interest which form the subject matter of this case. On March 26, 1959, Frances Carter Frick, individually and as executrix of the estate of Harold C. Frick, filed with the Finance Office of the District of Columbia a claim for refund of the aforementioned taxes. The time for action on the claim for refund having expired, Frances C. Lewis (formerly Frances Carter Frick) executrix of the estate of Harold C. Frick, deceased, filed on November 2, 1959, a petition in the District of Columbia Tax Court seeking a refund of the inheritance taxes, to-

gether with interest. That court had jurisdiction over respondent's appeal under the provisions of Section 3 of Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223, and as amended by Section 5 (b) of the Act of July 26, 1939, 53 Stat. 1108, and by Section 3 (a) of the Act of July 10, 1952, 66 Stat. 543, ch. 649 (Section 47-2403, D. C. Code, 1951, Supp. VIII). Following a decision of the District of Columbia Tax Court reversing the action of the Finance Officer in denying respondent's claim for refund of inheritance taxes on the ground that respondent was not liable under the District of Columbia inheritance tax statute, the District of Columbia appealed to the United States Court of Appeals for the District of Columbia Circuit. The latter court had jurisdiction over the appeal pursuant to the provisions of Section 4, Title IX, District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223 and as amended by Section 3(b) of the Act of July 10, 1952, 66 Stat. 543, ch. 649 (Section 47-2404, D. C. Code, 1951, Supp. VIII). On January 19, 1961, the Court of Appeals, through a three-judge Division, rendered a decision in which the majority of the Division concluded that a transfer in lieu of a husband's obligation to support his wife during their joint lives or until her remarriage is made "for full and adequate consideration in money or money's worth" within the meaning of the District of Columbia inheritance tax statute. Mr. Justice Burton, to the contrary, stated in his dissenting opinion that decisions of this Court upon substantially identical provisions of Federal tax statutes are determinative of the question posed in this case, and that these decisions require the conclusion that the transfer of personal property by the deceased to his divorced wife is a taxable transfer not made for full consideration in money or money's worth.

Following the decision of the majority of the Division, the District petitioned the Court of Appeals for a rehearing en banc pursuant to Rule 26 of the General Rules of that court. By order dated February 21, 1961, the court denied the District's petition.

REASONS FOR GRANTING WRIT

The decision in this case by the United States Court of Appeals for the District of Columbia Circuit is not of that category of decisions which this Court in *Del Vecchio* v. *Bowers*, 296 U.S. 280, 80 L. Ed. 229, 56 S. Ct. 190, said this Court would not ordinarily review. This case concerns an interpretation of the District of Columbia inheritance tax statute, as did *District of Columbia* v. *Pace*, 320 U.S. 698, 88 L. Ed. 408, 64 S. Ct. 406, decided by this Court January 10, 1944. This case, and the results which follow upon the decision thereof by the Court of Appeals, are matters of paramount importance to the District of Columbia and to the administration of its tax statutes.

Moreover, the petition for writ of certiorari sought by the District of Columbia presents to this Court for consideration a decision of the United States Court of Appeals for the District of Columbia Circuit which is unquestionably at variance with decisions of this Court and numerous decisions of the United States Circuit Courts of Appeal in similar matters, and which is at variance with the District of Columbia inheritance tax statute, as amended. That statute is the basis for a substantial part of the revenue raised by the District of Columbia for the carrying out of its governmental functions.

The District of Columbia inheritance tax statute provides for a tax upon property transferred out of a deceased's estate "by deed, grant, bargain, gift, or sale (*except in cases of a bona fide purchase for full consideration in money or money's worth*) * * *." (Emphasis supplied.)

As the Court of Appeals stated, the payment in question was "transferred by deed, grant, bargain, gift, or sale." The issue presented is solely whether the transfer was made for "full consideration in money or money's worth" within the meaning of the District statute. The District contends here, as it did below, that, although this phrase has not been the subject of an interpretation by any appellate court in the District of Columbia, substantially identical phrasing in federal tax statutes has been construed by this Court, as well as numerous federal circuit courts of appeal and that such construction is controlling herein.

The question in the present case was considered in 1946 by the United States Circuit Court of Appeals for the Second Circuit in *Commissioner of Internal Revenue* v. *Marcsi*, 156 F. 2d 929. In an opinion written by Judge Learned Hand involving the Internal Revenue Code of 1939, the Court said at page 930:

> "* * * The Tax Court held that the claim was not 'founded on a promise or agreement,' but upon the decree of the divorce court, and that therefore the qualification of § 812 (b), did not apply that any allowance must be limited to what was given in consideration of 'money or money's worth' * * *."

The Court went on to hold:

> "We have three times decided that the words in the last paragraph of § 812 (b): 'other marital rights in the decedent's property,' include a wife's right to support during her husband's life. It follows that a claim based upon an agreement by which a wife relinquishes that right in consideration of sums, payable in whole or in part at or after his death, is not deductible from his gross estate. * * * That rule is too well settled to be disturbed; * * *. That question apparently first arose in 1939, and the Board of Tax Appeals held

> that, since the divorce court was free to disregard any allowances made in the separation agreement, the allowances were authentically its own, even in cases where it expressly accepted as proper the allowances actually agreed upon. * * * there are no decisions to the contrary. At first blush the distinction may seem a little formal, but on consideration it appears to be sound. One can of course say that a divorce decree is 'founded' upon the testimony of the witnesses, and in that sense the decree of the Nevada court in the case at bar was 'founded' upon the separation agreement. But it is pretty clear that that is not the sense in which § 812(b) uses the word; rather it means that the legal transaction which creates the obligation is the agreement, and in that sense the allowances are not 'founded' upon the agreement but upon the command of the court. * * *."

The *Maresi* case was cited with approval by this Court in 1950 in *Harris* v. *Commissioner of Internal Revenue*, 340 U. S. 106, 95 L. Ed. 111, 71 S. Ct. 181. In the *Harris* case the parties had entered into a separation agreement setting forth their respective rights to jointly owned property. The agreement stated that its purpose was to effect a settlement of the respective property rights, and also provided that in the event a divorce should be decreed, the final settlement agreement would be submitted to the divorce court "for its approval." This Court, pointing out that the agreement was conditioned upon the entry of a divorce decree and noting that the divorce court was free to accept the provisions of the agreement in whole or in part, said at page 110:

> "* * * The decree, not the arrangement submitted to the Court, would fix the rights and obligations of the parties. *That was the theory of Commissioner* v. *Maresi, 156 F. 2d 929, and we think it sound.*" (Emphasis supplied.)

This Court then emphasized:

> "• • • In each case it is the decree that creates the rights and duties; and a decree is not a 'promise or agreement' in any sense—popular or statutory."

This Court held that the transfers involved in the *Harris* case *were founded* upon the divorce decree and were therefore not subject to the Federal gift tax. In the present case, however, the transfer in question was based upon a provision in a separation agreement which was *not* incorporated into the divorce decree.

Mr. Justice Burton, in citing *Harris* in his dissent in the case at bar, said:

> "• • • Th marital rights given up by the wife appear to have been substantially the same in *Harris* as those given up by the wife in the instant case. The Supreme Court regarded it as settled that if the transfer had been based merely upon the separation agreement, as it was in the instant case, there would have been no transfer for adequate and full consideration and the transfer would have been subject to the gift tax. • • •."

In *Merrill* v. *Fahs*, 324 U. S. 308, 89 L. Ed. 963, 65 S. Ct. 655, decided in 1945, this Court considered a transfer which a taxpayer claimed constituted "adequate and full consideration in money or money's worth" based upon the relinquishment of her marital rights under the Federal gift tax statute containing a provision similar to provisions in the Federal estate tax and District of Columbia inheritance tax statutes. Tracing the development of this phrase since its first appearance in the Revenue Act of 1926, this Court pointed out that Congress changed the wording after the phrase "fair consideration" contained in previous acts had been given an expanded construction by the courts. This Court said at page 312:

> "• • • Congress undoubtedly intended the requirement of 'adequate and full consideration' to exclude relinquishment of dower and other marital rights with respect to the estate tax. • • •."

As Mr. Justice Burton emphasized in his dissent:

> "• • • I must conclude, therefore, that the meaning of the somewhat cryptic exemption clause now before us has been authoritatively determined by the Supreme Court. Whatever doubt might have been engendered by the omission of any express reference to the effect of the relinquishment of marital rights from the gift tax statute and from the District inheritance tax statute, that doubt has been dispelled by the decisions in the *Merrill* and *Harris* cases. See also *Taft* v. *Commissioner*, 304 U. S. 351 (1938)."

Mr. Justice Burton concludes:

> "In *Merrill* v. *Fahs*, the Supreme Court made it clear that its guiding principle in the construction of these statutes was that the federal gift and estate taxes must be uniformly construed. The Court said that 'to interpret the same phrases in the two taxes concerning the same subject matter in different ways where obvious reasons do not compel divergent treatment is to introduce another and needless complexity into this already irksome situation.' 324 U. S. at 313. The Supreme Court held that the federal estate and gift taxes were *in pari materia* and should be interpreted harmoniously lest there be a 'subversion of the legislative intent.' The need to give harmonious construction to the words in Congress' taxing statutes is no less compelling here."

Various Federal courts have ruled in conformance with the decisions of this Court regarding the taxability of transfers under the Federal estate and gift tax statutes. *Meyer's Estate* v. *Commissioner*, 110 F. 2d 367, cert. denied

310 U. S. 651; *Helvering* v. *United States Trust Co.*, 111 F. 2d 576; cert. denied, 311 U. S. 678; *Adriance* v. *Higgins*, 113 F. 2d 1013.

As late as April 1, 1960, the United States District Court for the Southern District of Florida cited *Harris* v. *Commissioner*, *supra*, as controlling, for Federal estate tax purposes, upon the subject of transfers similar to the one in the present case. In *Florida National Bank and Trust Company at Miami* v. *United States*, 182 F. Supp. 76, the District Court said:

> "While numerous other cases have been cited and text citations given, including Mertens, Law of Federal Gift & Estate Taxation, Vol. 5, page 180, ¶ 34.41 and other paragraphs, it seems clear that whatever may have been any apparent conflict in the older decisions, these conflicts were all set to rest by the United States Supreme Court decision of Harris v. Commissioner, and that that rule has been adhered to since.
>
> "There seems to be no real dispute about the federal law on this subject. • • •."

CONCLUSION

The decision of the United States Court of Appeals for the District of Columbia Circuit is contrary to and at variance with applicable decisions of this Court, as well as with applicable decisions of other Federal courts upon the same subject matter. As such, the decision results in a construction of the District of Columbia Inheritance Tax Statute inconsistent with that given by this Court to the similarly worded Federal estate and gift tax statutes. Moreover, aside from the conflict in construction, the assessment of inheritance tax upon the transfer at issue in this case was clearly correct since, in any event, the transfer was not made "for full consideration in money or money's worth."

For these reasons, the District of Columbia asks that its petition herein for a writ of certiorari be granted.

Respectfully submitted,

CHESTER H. GRAY,
Corporation Counsel, D. C.
MILTON D. KORMAN,
Principal Assistant Corporation Counsel, D. C.
HENRY E. WIXON,
Assistant Corporation Counsel, D. C.
HARRISON S. HOWES,
Assistant Corporation Counsel, D. C.
Attorneys for Petitioner,
District Building,
Washington 4, D. C.

May, 1961

APPENDIX A

Opinion of the Court

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,780

DISTRICT OF COLUMBIA, PETITIONER

v.

FRANCES C. LEWIS (formerly Frances Carter Frick), Executrix, Estate of Harold C. Frick, Deceased, RESPONDENT

On Petition for Review of a Decision
of the District of Columbia Tax Court

Dated January 19, 1961

Mr. Harrison S. Howes, Assistant Corporation Counsel for the District of Columbia, with whom *Messrs. Chester H. Gray,* Corporation Counsel, *Milton D. Korman,* Principal Assistant Corporation Counsel, and *Henry E. Wixon,* Assistant Corporation Counsel, were on the brief, for petitioner.

Mr. Henry H. Elliott for respondent.

Before MR. JUSTICE BURTON, retired,* and BAZELON and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge:* On December 22, 1934, Harold C. Frick and his first wife, Vida, entered into a "Property Settlement and Separation Contract." That agreement recited that there had been a final and irreconcilable separation of the parties and that it was their desire to settle and agree upon all property rights between them by virtue of their marital relationship. The agreement

*Sitting by designation pursuant to § 294(a), Title 28, U. S. Code.

then set out in painstaking detail the exact terms of the decisions of the parties.

Paragraph 1 of the agreement provided that all property, real and personal, with certain exceptions thereinafter enumerated, owned by the husband prior to his marriage and all property acquired by him during the marriage and then owned by him should be the absolute property of the husband, free and clear of any claim, dower interest, statutory interest or other interest of any kind or character whatsoever of the wife by reason of the marriage relationship, and there was the usual provision requiring relinquishment of those rights. Paragraph 2 contained the same provisions for the property of the wife owned by her at the time of the marriage and all property acquired by her in her own right since the marriage, with the same provisions as to relinquishment of the rights of the husband.

Paragraph 3 provided that all furniture, household goods and effects, and the like, with the exception of personal effects belonging to the husband and certain books, should be the absolute property of the wife; and it was agreed that the furniture, household goods and effects were free of any encumbrance.

Paragraph 4 provided that an automobile the property of the husband should be conveyed to the wife, free and clear of encumbrance.

Paragraph 5 provided that certain real estate, presumably the former home of the parties, title of which stood in the names of both parties, should be the property of the wife subject to an encumbrance of $16,500.00, and that certain real estate in Colorado standing in the name of the wife should be her absolute property, free and clear of any rights of the husband. There were in paragraph 5 a number of requirements as to pro-rating taxes and insurance policies, and an agreement by the husband to pay certain expenses up to January 1, 1935.

Paragraphs 6 to 10 provided detailed arrangements for the support of the wife and daughter. It was agreed that the husband would pay $400.00 per month for the support and maintenance of the wife and daughter, and there was an escalator clause by which the support arrangement could be upped or lowered, depending upon the husband's income. No provision was made for their two sons because they were then in the husband's employ.

It is paragraph 7 which gives rise to this controversy. Item 3 of that paragraph provides as follows:

> "(3) If first party [husband] should at any time hereafter depart this life, in lieu of all payments hereunder due from the date of his death and necessarily to be paid from this estate, a lump sum shall be paid to second party [wife] as follows:
>
> "(a) If he should die within six years from this date the sum of Forty-five Thousand Dollars ($45,000.00)
>
> "(b) If he should die between the years 1940 and 1946, the sum of Forty Thousand Dollars ($40,000.00).
>
> "(c) If he should die between the years 1946 and 1952, the sum of Thirty-five Thousand Dollars ($35,000.00).
>
> "(d) If he should die between the years 1952 and 1958 the sum of Twenty-five Thousand Dollars ($25,000.00).
>
> "Upon the proof of this contract and the lodging of second party's claim against first party's estate, the amount due, as herein contemplated, shall be allowed by the court administering his estate and promptly paid."

There are other provisions in the agreement which are not pertinent to this action.

On the same day the agreement was signed, a decree of absolute divorce was entered in the Circuit Court of Jackson County, Missouri, dissolving the bonds of matrimony

between the parties, giving the care, custody and control of the sons to the husband, and providing that the husband pay to the wife, during her natural life or until she should marry, the sum of $400.00 per month for the support and maintenance of herself and the daughter of the parties. The husband was further directed to pay the sum of $1,000.00 attorney's fees, the amount provided in the separation agreement. Somewhat later, Harold Frick moved to the District of Columbia and married Frances Carter.

Sometime after the divorce between the husband and his first wife, a suit having to do with the monthly support payments was filed by Vida against her husband in the United States District Court for the District of Columbia; and, on March 2, 1942, due to a stipulation between the parties and the court being advised that all matters of difference between the parties had been adjusted and settled, the action was dismissed.

The husband remained married and domiciled in the District of Columbia until his death in July 1956, a short time prior to which he had made a will wherein, after provision for the payment of debts, funeral expenses and the like, his entire estate was bequeathed to Frances, who was appointed executrix. There was no provision in the will for the payment of $25,000.00 to Vida.

Vida thereupon filed claim upon the decedent's estate for the sum of $25,000.00, which she claimed to be owing to her under the provision of the separation agreement providing that she should receive that amount if the decedent died between the years 1952 and 1958. The claim being rejected, suit for $25,000.00 was filed by Vida in the United States District Court for the District of Columbia against the estate of Harold C. Frick. The claim was adjusted by payment of $23,500.00 to Vida out of the funds of the estate, whereupon the suit was entered "Settled, Satisfied and Dismissed with Prejudice." An inheritance tax was assessed against Vida by the assessing authority of the District of

Columbia and, the tax not being paid, payment from the estate was secured by distraint. The executrix filed claim for refund with the District of Columbia Finance Office. The claim was denied and the executrix then sued for refund in the District of Columbia Tax Court. That court granted the relief sought, and this petition by the District of Columbia for review of the decision followed.

Petitioner's claim is based on § 47-1601(a) of the District of Columbia Code, which reads in pertinent part as follows:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All . . . personal property . . . transferred by deed, grant, bargain, gift, or sale (*except in cases of a bona fide purchase for full consideration in money or money's worth*). . . ." [Emphasis supplied.]

There is no question but that the payment here in question was "transferred by deed, grant, bargain, gift, or sale."

The issue of the case then is whether a transfer from a husband to his wife, if in lieu of his support obligation, is made for "full consideration in money or money's worth" within the meaning of § 47-1601(a) of the District of Columbia Code.

The meaning of this phrase in the District of Columbia Code has never been decided. However, the identical phrase has appeared for many years in the Internal Revenue Code, and we look for guidance to decisions interpreting the phrase there.

"[R]elinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights . . . shall not be considered to any extent a consideration 'in money or money's worth.'" Int. Rev. Code of 1954, § 2043(b); Int. Rev. Code of 1939, § 812(b); see *Merrill* v. *Fahs*, 324 U.S. 308 (1945), interpreting § 303(a)(1) of the Revenue Act of 1926 and § 503 of the Revenue Act

of 1932. The problem of the instant case, then, lies in determining whether a wife's right to support is one of the "other marital rights" referred to in the sections quoted above.

In *Meyer's Estate* v. *Commissioner of Internal Revenue*, 116 F.2d 367 (2d Cir. 1940), it was held that the wife's right of support was one of the "other marital rights." Learned Hand, J., dissenting, pointed out that a wife's right to support is not analogous to dower because it is not a right in the property of the husband. It was Judge Hand's view that the words "other marital rights" were merely intended to provide for future substitutes for the estates of dower and curtesy. That dissent was never adopted by the Second Circuit. See Judge Hand's majority opinion in *Commissioner of Internal Revenue* v. *Maresi*, 156 F.2d 929 (2d Cir. 1946).

However, the Internal Revenue Service itself has since declined to follow the *Meyer's Estate* and *Maresi* cases. E.T. 19, Cum.Bull. 1946-2, 166 states that a transfer in lieu of support is a substitute for a transaction which of itself would not be subject to a transfer tax, whereas a transfer in lieu of dower is made in lieu of a transaction which would be subject to such a tax. The reasoning of the Internal Revenue Service is that the federal transfer tax should reach every transfer made in lieu of one which would be taxed, and *vice versa*. We think this is the better view and, therefore, agree with the reasoning of the Internal Revenue Service that "support" is not one of the "other marital rights." We are thus unwilling to follow *Meyer's Estate* and *Maresi*.

We have been referred to *Commissioner of Internal Revenue* v. *Weymss*, 324 U.S. 303 (1945), and *Merrill* v. *Fahs*, *supra*. These cases are not in point. The *Weymss* case held that an antenuptial property settlement in consideration of the forthcoming marriage was not made for "money or money's worth," *i.e.*, that marriage itself is not

consideration in money or money's worth. *Merrill* held that an antenuptial settlement made in consideration of relinquishment of dower was not made for consideration in money or money's worth. Neither of these cases decided whether relinquishment of support was money or money's worth or whether support was one of the "other marital rights."

Harris v. *Commissioner of Internal Revenue*, 340 U.S. 106 (1950), indicates that a voluntary contractual division of *marital property rights* upon divorce would be subject to the federal gift tax. The Supreme Court was not faced with the question of the taxability of transfers in lieu of a husband's legal obligation to support his wife, which is the issue here involved.

We therefore hold that a transfer in lieu of a husband's obligation to support his wife during their joint lives, or until her remarriage, is made "for full and adequate consideration in money or money's worth." If the lump sum payment here was in lieu of the support obligation, then it is not subject to a transfer tax.

By analogy to *Dobson* v. *Commissioner of Internal Revenue*, 320 U.S. 489 (1943), and the United States Tax Court, the case will be remanded to the District of Columbia Tax Court to decide the factual question of whether this transfer was in lieu of the support obligation and to determine, subject to further review, the proper standard to be used in making the finding.

The decision of the District of Columbia Tax Court is therefore reversed, and the case is remanded for the further finding called for in this opinion and for such disposition as the Tax Court then deems proper.

So ordered.

MR. JUSTICE BURTON, dissenting: This case tests the applicability of the District of Columbia inheritance tax statute, D.C. Code, 1951, § 47-1601, to a lump sum payment of $23,500 made in 1957 out of the estate of a deceased

domiciliary of the District of Columbia to his former wife. The payment was made in settlement of an obligation arising under a separation agreement relinquishing marital rights and entered into in 1934 between husband and wife immediately before their divorce but not incorporated in the divorce decree. The District assessed its inheritance tax of $1,125 against the recipient of the payment and in 1959 collected the tax by distraint levied upon funds of the estate on deposit in the District.

Respondent, who was the second wife of the deceased and is the executrix of his estate, filed a claim with the Finance Officer for the District seeking a refund of the tax which the District had collected. Upon denial of that claim, she instituted an action in the District of Columbia Tax Court for the refund of such tax. That court held that the District inheritance tax statute was not applicable and ordered the District to refund to respondent, with interest, the amount erroneously collected. The District now asks this Court to review that decision. It is my opinion that the District inheritance tax statute is applicable to such a payment and that the judgment of the local Tax Court to the contrary should be reversed. The interpretation that has been given to comparable language in the federal estate tax statute leads me to this conclusion.

The District inheritance tax statute was enacted in 1937 [1] and amended in other particulars on July 26, 1939.[2] It provides in part:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All . . . personal property . . . transferred by deed, grant, bargain, gift, or sale (*except in cases of a bona fide purchase for full consideration in money or money's worth*) . . . ." (Emphasis added.) D.C. Code, 1951, § 47-1601.

---

[1] District of Columbia Revenue Act of August 17, 1937, 50 Stat. 683.
[2] District of Columbia Revenue Act of July 26, 1939, 53 Stat. 1111.

The language emphasized above is closely comparable to that which has long been a part of the *federal* estate tax statute. For example, § 303(a)(1) of the Revenue Act of 1926, 44 Stat. 72, allowed a deduction from the gross estate for "claims . . . contracted bona fide and for an adequate and full consideration in money or money's worth . . . ." In addition, § 804 of the Revenue Act of 1932, 47 Stat. 280, added to the *federal* estate tax provisions an interpretative declaration, never incorporated in the District inheritance tax statute, that "a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other *marital rights in the decedent's property or estate, shall not be considered to any extent a consideration in 'money or money's worth.'* " (Emphasis added.)

Both of the foregoing clauses were substantially reenacted in § 812 of the Internal Revenue Code of 1939 and in §§ 2053 and 2043 of the Internal Revenue Code of 1954.[3]

---

[3] "SEC. 812. NET ESTATE.

"(b) . . . The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were *contracted bona fide and for an adequate and full consideration in money or money's worth.* . . .

"For the purposes of this subchapter [basic estate tax], a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other *marital rights in the decedent's property or estate, shall not be considered to any extent a consideration in 'money or money's worth.'* " (Emphasis added.) I.R.C., 1939.

"SEC. 2053. EXPENSES, INDEBTEDNESS, AND TAXES.

* * * *

"(c) . . .

"(1) . . .

"(A) CONSIDERATION FOR CLAIMS.—The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded on a promise or agreement, be limited to the extent that they were *contracted bona fide and for an adequate and full consideration in money or money's worth . . . .*" (Emphasis added.)

"SEC. 2043. TRANSFERS FOR INSUFFICIENT CONSIDERATION.

* * * *

"(b) MARITAL RIGHTS NOT TREATED AS CONSIDERATION.—For purposes of this chapter [estate tax], *a relinquishment* or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other *marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth.'* " (Emphasis added.) I.R.C., 1954.

Respondent contends that by thus specifically providing in the *federal* estate tax statute that relinquishment of marital rights is not sufficient consideration to make a claim deductible from the gross estate, and by omitting any such specific provision from the *District* inheritance tax statute, Congress has indicated that the relinquishment of marital rights may be sufficient consideration under the *District* Code. According to respondent, the words, "full consideration in money or money's worth," are to have different meanings in the Federal and District Acts.

On the other hand, the District claims, and I agree, that the Supreme Court of the United States in *Merrill* v. *Fahs*, 324 U.S. 308 (1945), has fully considered substantially the same issue in a case involving the federal gift tax and has decided to the contrary. In that case a man promised in an antenuptial agreement to set up a trust for the benefit of his intended wife in consideration of her relinquishing all marital rights except the right to maintenance and support. The gift tax statutes of 1939 and 1954 contain language exempting from that tax transfers made in return for "adequate and full consideration in money or money's worth."[4] The gift tax provisions, however, contain no express reference to payments involving relinquishment of marital rights. It was argued in that case, as respondent argues here, that this omission was significant. The Supreme Court rejected that argument. It held that the omission of the provision as to marital rights did not change the meaning of the exemption clause. On the contrary, the Su-

[4] Section 1002 of the Internal Revenue Code of 1939 provides:

"Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

Section 2512 (b) of the Internal Revenue Code of 1954 provides:

"Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

preme Court held that Congress had merely omitted an unnecessary and redundant illustration of the effect of that exemption. The Supreme Court said:

> "To be sure, in the 1932 Act Congress specifically provided that relinquishment of marital rights for purposes of the estate tax shall not constitute 'consideration in money or money's worth.' The Committees of Congress reported that *if the value of relinquished marital interests 'may, in whole or in part, constitute a consideration for an otherwise taxable transfer tax has been held to be so), or an otherwise unallowable deduction from the gross estate, the effect produced amounts to a subversion of the legislative intent . . .'* H. Rep. No. 708, 72d Cong., 1st Sess., p. 47; S. Rep. No. 665, 72 Cong., 1st Sess., p. 50. *Plainly, the explicitness was one of cautious redundancy to prevent 'subversion of the legislative intent.'* Without this specific provision, Congress undoubtedly intended the requirement of 'adequate and full consideration' to exclude relinquishment of dower and other marital rights with respect to the estate tax. *Commissioner* v. *Bristol*, 121 F. 2d 129; *Sheets* v. *Commissioner*, 95 F. 2d 727." (Emphasis added.) 324 U.S., at 312-313.

There is no more reason, in order to clarify the meaning of "full consideration," to require specific reference to marital rights in the District inheritance tax than there was in the federal estate and gift taxes.

It is true that the marital rights involved in *Merrill* v. *Fahs* did not include the wife's right of support during her husband's life. This was one of the marital rights — although apparently not the only one — which the wife in the instant case gave up in return for the payments she received. But the Supreme Court's opinion in the *Merrill* case was not narrowly restricted to dower rights and their analogues. The Supreme Court spoke broadly of "dower and other marital rights." 324 U.S., at 312.

In *Harris* v. *Commissioner*, 340 U.S. 106, 109 (1950), the Supreme Court considered the application to a transfer of property pursuant to a divorce decree of the same gift tax section which was at issue in *Merrill* v. *Fahs*. The marital rights given up by the wife appear to have been substantially the same in *Harris* as those given up by the wife in the instant case. The Supreme Court regarded it as settled that if the transfer had been based merely upon the separation agreement, as it was in the instant case, there would have been no transfer for adequate and full consideration and the transfer would have been subject to the gift tax. I must conclude, therefore, that the meaning of the somewhat cryptic exemption clause now before us has been authoritatively determined by the Supreme Court. Whatever doubt might have been engendered by the omission of any express reference to the effect of the relinquishment of marital rights from the gift tax statute and from the District inheritance tax statute, that doubt has been dispelled by the decisions in the *Merrill* and *Harris* cases. See also *Taft* v. *Commissioner*, 304 U.S. 351 (1938).

It is also persuasive that the Second Circuit has repeatedly held, in cases under the federal estate tax, that a wife's right to support during her husband's life is a "marital right" within the specific exemption of § 812 (b) of the Internal Revenue Code of 1939 (now § 2043 (b) of the Internal Revenue Code of 1954), and that her relinquishment of this right is not adequate and full consideration for a claim against the husband's estate. The leading case is *Meyer's Estate* v. *Commissioner*, 110 F. 2d 367, cert denied, 310 U.S. 651 (1940).

In *Merrill* v. *Fahs*, the Supreme Court made it clear that its guiding principle in the construction of these statutes was that the federal gift and estate taxes must be uniformly construed. The Court said that "to interpret the same phrases in the two taxes concerning the same subject matter in different ways where obvious reasons do not

compel divergent treatment is to introduce another and needless complexity into this already irksome situation." 324 U.S., at 313. The Supreme Court held that the federal estate and gift taxes were *in pari materia* and should be interpreted harmoniously lest there be a "subversion of the legislative intent." The need to give harmonious construction to the words in Congress' taxing statutes is no less compelling here.

It would be a "subversion of the legislative intent" to interpret the statutory exemption in such a manner as to leave the federal estate tax and the federal gift tax statutes applicable as they are, but to interpret the same language in the District inheritance tax statute so as to make that tax inapplicable. In the face of the *Merrill* and *Harris* decisions such a distinction could be justified only if an express decision or statutory provision required it. No such justification is shown here.

I conclude, therefore, that the $23,500 payment was not made for full consideration in money or money's worth and that the District inheritance tax is applicable. Accordingly, I would reverse the judgment of the District of Columbia Tax Court.

JUDGMENT OF THE COURT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15, 780
September Term, 1960

DISTRICT OF COLUMBIA, *Petitioner*,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick), Executrix, Estate of Harold C. Frick ,deceased, *Respondent*.

ON PETITION FOR REVIEW OF A DECISION OF THE DISTRICT OF COLUMBIA TAX COURT

Before: MR. JUSTICE BURTON, RETIRED, AND BAZELON AND BASTIAN, *Circuit Judges*.

JUDGMENT

This case came on to be heard on the record from the District of Columbia Tax Court, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this court that the decision of the said Tax Court on review herein is reversed, and that this case is remanded to the District of Columbia Tax Court for further proceedings consistent with the opinion of this court.

It is further ORDERED by the court that petitioner herein recover from respondent its taxable costs on this appeal.

Per Circuit Judge Bastian.

Dated: January 19, 1961.
Separate dissenting opinion by Mr. Justice Burton.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit
Filed Jan. 19, 1961
Joseph W. Stewart, *Clerk*

LIBRARY
SUPREME COURT, U. S.

FILED
JUN 9 1961
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. 992

DISTRICT OF COLUMBIA,

Petitioner,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

HENRY H. ELLIOTT,
HUGH C. BICKFORD,
Attorneys for Respondent,
917 15th Street, N.W.,
Washington 5, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. 982

DISTRICT OF COLUMBIA,

Petitioner,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

In opposition to the Petition of the District of Columbia for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit in the above entitled case, Respondent states:

Statement of Question Presented

The Statement of Question presented as stated by the Petitioner is too broad. The question decided by the United States Court of Appeals for the District of Columbia Circuit is whether amounts paid by the Estate of Harold

C. Frick, deceased, to a former wife in lieu of alimony in accordance with a separation agreement entered into immediately prior to an absolute divorce decree is subject to District of Columbia inheritance taxes.

Statement of the Case

Petitioner's Statement of the Case, Page 5, is not full and complete and omits essential provisions of the separation agreement which may tend to mislead the Court as to the question here presented.

The opinion of Circuit Judge Bastian, Pages 1A-5A of the Appendix, carefully summarizes the separation agreement of 1934 and shows that all property rights including dower were finally settled in 1934 and the only unexecuted part of the agreement was support provisions for the wife, Vida M. Frick.

On January 19, 1961, the Court of Appeals, through a three-judge Division, held that "if the lump sum payment here was in lieu of the support obligation, then it is not subject to a transfer tax."

Reasons for Denying Writ

This Court does not ordinarily review decisions of the United States Court of Appeals for the District of Columbia Circuit which are based on statutes confined in their operations to the District of Columbia. *Del Vecchio* v. *Bowers*, 296 U.S. 280, 80 L.Ed. 229, 56 S.Ct. 190.

Petitioner cites *District of Columbia* v. *Pace*, 320 U.S. 698, 88 L.Ed 408, 64 S.Ct. 406, as an exception to the rule in Del Vecchio case. In the Pace case, this Court stated that certiorari was granted to decide "the scope of review of decisions by the Board of Tax Appeals of the District of Columbia." The question there is not one of interpretation of District of Columbia statutes.

This case involves an interpretation of the District of Columbia Inheritance Tax Statute passed by Congress in 1937. The specific question is whether an amount paid by a decedent's estate under a separation agreement to a divorced wife in lieu of alimony is subject to District of Columbia inheritance tax.

The District of Columbia inheritance tax statutes imposed a tax on shares of beneficiaries and gifts of property "transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift or sale (except in cases of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the decedent * * * "

Petitioner's argument is based upon decisions involving Federal Estate Tax Statutes.

The Federal Estate Tax Statute, Section 812(b) of I.R.C. 1939, is more specific than the District of Columbia inheritance statute.

The pertinent part of Section 812(b) reads:

> "The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; * * *
>
> "For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

The opinion of Judge Bastian states the history of the litigation on the question of taxability of support obligations.

In 1940, the Commissioner of Internal Revenue successfully convinced the Court of Appeals for the Second Circuit that a wife's right to support was one of the "other marital rights". *Meyer's Estate* v. *Commissioner of Internal Revenue*, 110 F.2nd 367.

This case was followed in 1946 by *Commissioner of Internal Revenue* v. *Maresi*, 156 F.2nd 929 (2nd Circuit) which held that if the payments to a divorced wife were provided for in the divorce decree it was not a "promise or agreement" between the parties to the divorce action and therefore not subject to Federal Estate Taxes.

In 1946, the Commissioner of Internal Revenue issued E.T. 19, Cum.Bull. 1946-2, 166, which states:

> "It is the view of the Bureau that the surrender of support rights is not one of the 'other marital rights' referred to in the section. The cases of *Meyer's Estate* v. *Helvering* (CCA 2, 1940) (110 Fed. (2d) 367, certiorari denied, 310 U.S. 651) and *Helvering* v. *United States Trust Co. et al* (CCA 2, 1940) 111 Fed. (2d) 576) will no longer be followed to the extent that they hold that the right of a divorced wife to support from a former husband during the joint lives of the parties is a marital right in his property or estate."

Accordingly, since 1946, the Internal Revenue Service has consistently held that support payments were an allowable deduction for Federal Estate Tax purposes.

The rule has been followed by the Commissioner of Internal Revenue since then. See Revenue Ruling 60-160 Cum. Bull. 1960-1, 374.

This Court referred to E.T. 19, *supra*, in *Harris* v. *Com-*

missioner of Internal Revenue, 340 U.S. 106 (1950), 71 S.Ct. 181, Note 1, page 185.

If the decision of Circuit Judge Bastian in this case is in error, then the Commissioner of Internal Revenue has been in error in his interpretation of the law of Congress since 1946.

As to the importance of this case to the revenues of the District of Columbia, the District Inheritance Tax Statute was enacted in 1937. This case in 1960 was the first to be presented to the Courts. Furthermore, since the *Marcus* case, *supra* and *Harris*, *supra*, even the much broader question of the taxability of property settlements is eliminated as it is a relatively simple matter for the parties to request the divorce court to approve property settlements, especially divorces granted by courts other than that of the marital domicile. Accordingly, it is highly problematical whether any of these cases will arise in the future.

Conclusion

Writ should be denied for the reasons that (1) decision by the Court of Appeals is correct and consistent with a fifteen year interpretation of Federal Estate Tax Statutes by the Commissioner of Internal Revenue, and (2) the question involves District of Columbia residents only and is of slight importance to District of Columbia revenues.

Respectfully submitted,

HENRY H. ELLIOTT,
HUGH C. BICKFORD,
Attorneys for Respondent,
917 15th Street, N.W.,
Washington 5, D. C.